



PRELIMINARY DRAFT

No. 3469

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-3.

Synopsis: Guardianships. Specifies the notice requirements following court action on a petition to appoint a temporary guardian. Changes the duration of a temporary guardianship from 60 days to 90 days. Authorizes a parent of a minor or a guardian of a protected person to designate a standby guardian effective upon the death or incapacity of the parent or guardian. Provides that the declaration is effective for 90 days unless the standby guardian files a petition for guardianship, in which case the declaration is effective until the court rules on the petition. Provides that a delegation of parental powers by power of attorney is effective immediately.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-3-3-4 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2011]: Sec. 4. (a) If:

- (1) a guardian has not been appointed for an incapacitated person or minor;
- (2) an emergency exists;
- (3) the welfare of the incapacitated person or minor requires immediate action; and
- (4) no other person appears to have authority to act in the circumstances;

the court, on petition by any person or on its own motion, may appoint a temporary guardian for the incapacitated person or minor for a specified period not to exceed ~~sixty (60)~~ **ninety (90)** days. No such appointment shall be made except after notice and hearing unless it is alleged and found by the court that immediate and irreparable injury to the person or injury, loss, or damage to the property of the alleged incapacitated person or minor may result before the alleged incapacitated person or minor can be heard in response to the petition. If a temporary guardian is appointed without **advance** notice and the alleged incapacitated person or minor files a petition that the guardianship be terminated or the court order modified, the court shall hear and determine the petition at the earliest possible time.

(b) If:

- (1) a petition is filed under this section for the appointment of a temporary guardian; and**
- (2) each person required to receive notice under IC 29-3-6-1(a) has not:**
 - (A) received a complete copy of the petition and notice required by IC 29-3-6-2 before the court considers and acts on the petition; or**
 - (B) received actual notice of the filing of the petition and specifically waived in writing the necessity for service of**



1 the notice required under IC 29-3-6-2 before the court
 2 considers and acts on the petition;
 3 the petitioner shall, on the earlier of the date the court enters an
 4 order scheduling a hearing on the petition or the date the court
 5 enters an order appointing a temporary guardian, serve complete
 6 copies of the petition, the court's order, and the notice required by
 7 IC 29-3-6-2 on every person entitled to receive notice under
 8 IC 29-3-6-1(a) and on each additional person to whom the court
 9 directs that notice be given. The requirements of this subsection
 10 are in addition to the petitioner's obligations under Rule 65 of the
 11 Indiana Rules of Trial Procedure to make a specific showing of the
 12 petitioner's efforts to provide advance notice to all interested
 13 persons or the reasons why advance notice cannot or should not be
 14 given.

15 ~~(b)~~ (c) If the court finds that a previously appointed guardian is not
 16 effectively performing fiduciary duties and that the welfare of the
 17 protected person requires immediate action, the court may suspend the
 18 authority of the previously appointed guardian and appoint a temporary
 19 guardian for the protected person for any period fixed by the court. The
 20 authority of the previously appointed guardian is suspended as long as
 21 a temporary guardian appointed under this subsection has authority to
 22 act.

23 ~~(c)~~ (d) A temporary guardian appointed under this section has only
 24 the responsibilities and powers that are ordered by the court. The court
 25 shall order only the powers that are necessary to prevent immediate and
 26 substantial injury or loss to the person or property of the alleged
 27 incapacitated person or minor in an appointment made under this
 28 section.

29 ~~(d)~~ (e) Proceedings under this section are not subject to the
 30 provisions of IC 29-3-4.

31 ~~(e)~~ (f) A proceeding under this section may be joined with a
 32 proceeding under IC 29-3-4 or IC 29-3-5.

33 SECTION 2. IC 29-3-3-7 IS ADDED TO THE INDIANA CODE
 34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 35 1, 2011]: Sec. 7. (a) A parent of a minor or the guardian of a
 36 protected person may designate a standby guardian by making a
 37 written declaration naming the individual designated to serve as a
 38 standby guardian. A declarant may name an alternate to the
 39 designated standby guardian if the designated standby guardian
 40 refuses to serve, renounces the appointment, dies, or becomes
 41 incapacitated after the death of the declarant.

42 (b) A declaration under this section must contain the following
 43 information:

44 (1) The names of the declarant and the designated standby
 45 guardian.

46 (2) The following information concerning each minor child or



protected person to be placed in the care and custody of the designated standby guardian:

(A) The person's full name as it appears on the birth certificate or as ordered by a court.

(B) The person's date of birth.

(C) The person's Social Security number, if any.

(c) A declaration executed under this section must be signed by the declarant in the presence of a notary public.

(d) A declaration executed under this section becomes effective upon the death or incapacity (as defined in IC 29-3-1-7.5) of the parent or guardian and terminates ninety (90) days after the declaration becomes effective. However, if the designated standby guardian files a petition for a guardianship of the minor or protected person during that ninety (90) day period, the declaration remains in effect until the court rules on the petition.

SECTION 3. IC 29-3-6-1, AS AMENDED BY P.L.143-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) When a petition for appointment of a guardian or for the issuance of a protective order is filed with the court, notice of the petition and the hearing on the petition shall be given by first class postage prepaid mail as follows:

(1) If the petition is for the appointment of a successor guardian, notice shall be given unless the court, for good cause shown, orders that notice is not necessary.

(2) If the petition is for the appointment of a temporary guardian, notice shall be given as required by ~~IC 29-3-3-4(a)~~ IC 29-3-3-4.

(3) If the subject of the petition is a minor, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The minor, if at least fourteen (14) years of age, unless the minor has signed the petition.

(B) Any living parent of the minor, unless parental rights have been terminated by a court order.

(C) Any person alleged to have had the principal care and custody of the minor during the sixty (60) days preceding the filing of the petition.

(D) Any other person that the court directs.

(4) If it is alleged that the person is an incapacitated person, notice of the petition and the hearing on the petition shall be given to the following persons whose whereabouts can be determined upon reasonable inquiry:

(A) The alleged incapacitated person, the alleged incapacitated person's spouse, and the alleged incapacitated person's adult children, or if none, the alleged incapacitated person's parents.

(B) Any person who is serving as a guardian for, or who has



the care and custody of, the alleged incapacitated person.

(C) In case no person other than the incapacitated person is notified under clause (A), at least one (1) of the persons most closely related by blood or marriage to the alleged incapacitated person.

(D) Any person known to the petitioner to be serving as the alleged incapacitated person's attorney-in-fact under a durable power of attorney.

(E) Any other person that the court directs.

Notice is not required under this subdivision if the person to be notified waives notice or appears at the hearing on the petition.

(b) Whenever a petition (other than one for the appointment of a guardian or for the issuance of a protective order) is filed with the court, notice of the petition and the hearing on the petition shall be given to the following persons, unless they appear or waive notice:

(1) The guardian.

(2) Any other persons that the court directs, including the following:

(A) Any department, bureau, agency, or political subdivision of the United States or of this state that makes or awards compensation, pension, insurance, or other allowance for the benefit of an alleged incapacitated person.

(B) Any department, bureau, agency, or political subdivision of this state that may be charged with the supervision, control, or custody of an alleged incapacitated person.

SECTION 4. IC 29-3-9-1, AS AMENDED BY P.L.101-2008, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) By a properly executed power of attorney, a parent of a minor or a guardian (other than a temporary guardian) of a protected person may delegate to another person for:

(1) any period during which the care and custody of the minor or protected person is entrusted to an institution furnishing care, custody, education, or training; or

(2) a period not exceeding twelve (12) months;

any powers regarding support, custody, or property of the minor or protected person, except the power to consent to the marriage or adoption of a protected person who is a minor. **A delegation described in this subsection is effective immediately unless otherwise stated in the power of attorney.**

(b) A person having a power of attorney executed under subsection (a) has and shall exercise, for the period during which the power is effective, all other authority of the parent or guardian respecting the support, custody, or property of the minor or protected person except any authority expressly excluded in the written instrument delegating the power. However, the parent or guardian remains responsible for any act or omission of the person having the power of attorney with respect



1 to the affairs, property, and person of the minor or protected person as
2 though the power of attorney had never been executed.
3 (c) Except as otherwise stated in the power of attorney delegating
4 powers under this section, a delegation of powers under this section
5 may be revoked by a written instrument of revocation that:
6 (1) identifies the power of attorney revoked; and
7 (2) is signed by the:
8 (A) parent of a minor; or
9 (B) guardian of a protected person;
10 who executed the power of attorney.

